LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 12 1963

IN THE

Supreme Court of the United States

October Term, 1963

No. 5

JAMES A. FOX and ALBERT R. SAMPSON,

Petitioners,

—v.—

STATE OF NORTH CAROLINA.

MEMORANDUM

JACK GREENBERG
JAMES M. NABRIT, III
10 Columbus Circle
New York 19, New York

SAMUEL S. MITCHELL
GEORGE R. GREENE
507 East Martin Street
Raleigh, North Carolina

F. J. CARNAGE
GEORGE E. BROWN
115½ East Hargett Street
Raleigh, North Carolina

Attorneys for Petitioners

WILLIAM T. COLEMAN, JR.
LOUIS H. POLLAK
Of Counsel

IN THE

Supreme Court of the United States

October Term, 1963

No. 5

JAMES A. FOX and ALBERT R. SAMPSON,

Petitioners,

—v.—

STATE OF NORTH CAROLINA.

MEMORANDUM

On June 13, 1963 the office of the Clerk requested, pursuant to direction by the Court, "that a memorandum be filed in the above captioned case as to whether or not there is a statute, ordinance, or executive order requiring discrimination on the basis of race."

Petitioners submit that administrative action in the nature of the categories about which inquiry was made has been adopted. The following excerpt from *Equal Protection of the Laws in North Carolina*, Report of the North Carolina Advisory Committee to the United States Commission on Civil Rights, p. 220 (1962) states the nature of the state action.

> No restaurant, cafe, food or drink stand, hotel, motel, tourist home, or any other place where food or drink is prepared, handled, or served for pay, or where lodging accommodations are provided can operate without a permit from, and inspection by, the State board of health. G.S. 72-46 (1941). Such places are graded

A, B, or C and the grade card must be displayed in a conspicuous place. Violations incur fines or imprisonment. Threatened violations of the statute or of board regulations may be enjoined.

The inspectors' official State form (form 451, revised July 1958) allows 10 points (out of 90 in the category or 1,000 total for the test) if the toilet facilities are "adequate for each sex and race."

Petitioners submit that this explicit administrative encouragement of racial segregation in public eating establishments is sufficient to bring this case within the rule of *Peterson* v. *City of Greenville*, 373 U.S. 244, and *Lombard* v. *Louisiana*, 373 U.S. 267.

Respectfully submitted,

JACK GREENBERG
JAMES M. NABRIT, III
10 Columbus Circle
New York 19, New York

SAMUEL S. MITCHELL
GEORGE R. GREENE
507 East Martin Street
Raleigh, North Carolina

F. J. CARNAGE
GEORGE E. BROWN
115½ East Hargett Street
Raleigh, North Carolina

Attorneys for Petitioners

WILLIAM T. COLEMAN, JR.
LOUIS H. POLLAK
Of Counsel